

REMARKS

Claims 9-19 are pending. By this Amendment, claims 9, 10 and 12 have been amended.

The Office Action rejects claims 9-19 under 35 USC 112. It is asserted that the amendments obviate the rejection. Withdrawal of the rejection is requested.

The Office Action rejects claims 9-11 and 15-16 under 35 USC 102 over Ricobene (US Re. 29,415) This rejection is respectfully traversed.

Claim 9 of the present application recites, *inter alia*, a member controlling the flow of gas and vapor between an inside of said container and an outside, said member being integrated into said wall means, a plurality of rigid stackable intermediate elements, each having an open upper portion, an openwork bottom, and side peripheral walls completely impermeable to gas and vapor, and each being capable of containing loose, packed or semi-packed produce, a rigid cover element completely impermeable to gas and vapor, connection means for fastening the bottom element, the peripheral walls, and the cover element to each other, said connection means being included in the bottom element, in the intermediate elements, and in the cover element, and means for providing a seal between the bottom element, the peripheral walls, and the cover element so that they are connected in a sealed manner.

In Ricobene, the "member" (using the terminology of claim 9 of the present application) is made of a set of apertures 60a-60m in the elements 14, and the set of apertures 34a-34e in the top and bottom elements 12. In contrast, the claimed member 12, 13 and 14 is integrated into the bottom element 4.

Even if one considers, as the Office Action appears to, that in Ricobene this second portion/member is made up only of the apertures 34a-34e in the bottom element, the fact still remains that the first portion does not include a cover element impermeable to gas and vapor, since the cover element 12 includes the apertures 34a-34e.

Furthermore, in Ricobene the purpose of the apertures is to allow a circulation of air between the elements and toward the outside of the container (column 4, lines 17-25). The

location of the apertures both on the top, middle, and bottom elements, allows a circulation of air about the food articles in the container which will collect moisture, and this circulation will help preserve the articles (column 3, line 64 – column 4, line 7).

On the contrary, in the claimed invention, optimal storage conditions are achieved by controlling the flow of gas and vapor between the inside and outside of the container thanks to a member integrated into a single element (the bottom element 4), through the regulation of pressure variations in the container (see specification, page 5, line 27 – page 6, line 16).

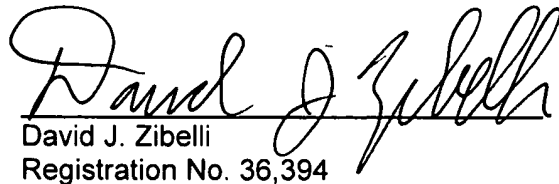
Consequently there is no incentive for the skilled man to modify the container of Ricobene to obtain the container of the present invention.

For the above reasons, it is submitted that the applied references do not anticipate any of the claims. Withdrawal of the rejections is requested.

For the above reasons, it is submitted that the application is in condition for allowance. Prompt consideration and allowance are solicited.

The Office is authorized to charge any additional fees under 37 C.F.R. § 1.16, § 1.17, or § 1.136, or credit of any overpayment, to Kenyon & Kenyon Deposit Account No. 11-0600. The Examiner is invited to contact the undersigned in the event there are any questions which could be resolved by telephone.

Respectfully submitted,


David J. Zibelli
Registration No. 36,394

Dated: December 19, 2006

KENYON & KENYON LLP
1500 K Street, N.W. - Suite 700
Washington, D.C. 20005 -1257
Tel: (202) 220-4200
Fax: (202) 220-4201
639702